



TITLE 21

Motor Vehicles

Operation and Equipment

CHAPTER 41. RULES OF THE ROAD

Subchapter IX. Driving While Intoxicated

§ 4177L. Driving by persons under the age of 21 after consumption of alcohol; penalties.

(a) Whoever, being under the age of 21 years, drives, operates or has actual physical control of a vehicle, an off-highway vehicle or a moped while consuming or after having consumed alcoholic liquor shall have that person's driver's license and/or privileges revoked for a period of 2 months for the first offense and not less than 6 months nor more than 12 months for each subsequent offense. If the underage person does not have a driver's license and/or privileges, the person shall be fined \$200 for the first offense and not less than \$400 nor more than \$1,000 for each subsequent offense.

(b) In any proceeding under this section, evidence may be admitted of the amount of alcohol in the blood or breath of such underage person as determined by a specimen taken within 4 hours of the time when such person is alleged to have driven, operated or been in control of a vehicle after having consumed alcoholic liquor as shown by an analysis of that person's breath, blood, urine, or saliva. Evidence that there was at the time of the test an alcohol concentration of .02 or more in that person's blood or breath is per se evidence that the person had consumed alcoholic liquor. "Alcohol concentration of .02 or more in that person's blood or breath" shall mean (1) an amount of alcohol in a sample of a person's blood equivalent to .02 or more grams of alcohol per hundred milliliters of blood; or (2) an amount of alcohol in a sample of a person's breath equivalent to .02 or more grams per 210 liters of breath. This provision shall not preclude a conviction based upon other admissible evidence.

(c) In addition to any other powers of arrest, any police officer is hereby authorized to arrest without a warrant any person who the officer has probable cause to believe has violated the provisions of this section, regardless of whether the alleged violation was committed in the presence of such officer.

70 Del. Laws, c. 36, § 1; 70 Del. Laws, c. 186, § 1; 71 Del. Laws, c. 450, § 1.



TITLE 21

Motor Vehicles

Registration, Title and Licenses

CHAPTER 27. DRIVER'S LICENSE

Subchapter III. Suspension and Revocation of License for Refusal to Submit

§ 2740. Consent to submit to chemical test; probable cause; test required.

(a) Any person who drives, operates or has in actual physical control a vehicle, an off-highway vehicle, or a moped within this State shall be deemed to have given consent, subject to this section and §§ 4177 and 4177L of this title to a chemical test or tests of that person's blood, breath and/or urine for the purpose of determining the presence of alcohol or a drug or drugs. The testing may be required of a person when an officer has probable cause to believe the person was driving, operating or in physical control of a vehicle in violation of §§ 4177 and 4177L or § 2742 of this title, or a local ordinance substantially conforming thereto.

(b) The testing shall be required of a person when an officer has probable cause to believe the person was driving, operating or in physical control of a vehicle in violation of § 4177 or § 2742 of this title or a local ordinance substantially conforming thereto and was involved in an accident which resulted in a person's death. In the event of a fatal accident if the officer does not believe that probable cause exists to require testing, then the officer shall file a written report outlining the reasons for that determination.

21 Del. C. 1953, § 2740; 57 Del. Laws, c. 52; 61 Del. Laws, c. 474, § 1; 63 Del. Laws, c. 430, § 1; 64 Del. Laws, c. 13, § 1; 70 Del. Laws, c. 36, § 2; 70 Del. Laws, c. 186, § 1; 70 Del. Laws, c. 236, § 1; 70 Del. Laws, c. 265, § 1.;

§ 2741. Administration of test; refusal to take test.

(a) At the time a chemical test specimen is required, the person may be informed that if testing is refused, the person's driver's license and/or driving privilege shall be (1) revoked for a period of at least 1 year if a violation of § 4177 is alleged; or (2) revoked for a period of at least 2 months if a violation of § 4177L is alleged. The test(s) shall be administered by qualified personnel, as defined in § 2746 of this title, at the direction of the police officer who shall designate which of the tests shall be administered.

(b) If there are reasonable grounds to believe that there is impairment by a drug or drugs which are not readily subject to detection by a breath test, a blood and/or urine test may be required even after a breath test has been administered.

(c) The fact that the police officer offered or required a person to submit to a preliminary screening test of the person's breath in order to estimate the alcohol concentration of the person's blood, at the scene of the stop or other initial encounter between the officer and the person, shall have no bearing upon the implied consent provisions of this chapter. Refusal to take such a preliminary screening test shall not be deemed an implied consent violation nor shall the taking of such a test satisfy the requirements of the implied consent law.

21 Del. C. 1953, § 2740A; 57 Del. Laws, c. 52; 61 Del. Laws, c. 474, § 1; 63 Del. Laws, c. 430, § 2; 64 Del. Laws, c. 13, § 2; 70 Del. Laws, c. 36, § 12; 70 Del. Laws, c. 186, § 1;

§ 2742. Revocation; notice; hearing.

(a) If a person refuses to permit chemical testing, after being informed of the penalty of revocation for such refusal, the test shall not be given but the police officer shall report the refusal to the Department. The police officer may, however, take reasonable steps to conduct such chemical testing even without the consent of the person if the officer seeks to conduct such test or tests without informing the person of the penalty of revocation for such refusal and thereby invoking the implied consent law.

(b)(1) Upon certification by the police officer that there existed probable cause to believe that the person had been acting in violation of § 4177 of this title or a local ordinance substantially conforming thereto and that the person refused to submit to a chemical test after being informed of the penalty of revocation for such refusal, the Secretary shall revoke the person's driver's license and/or driving privilege for a period of 1 year for a person with no previous violation of § 4177 of this title or this section or a similar statute of any state or the District of Columbia or local government, within 5 years of the date of the charge in question; 18 months' revocation for a person with 1 previous violation of such statutes as described above; and 24 months' revocation for a person with 2 or more previous violations of such statutes as described above.

(2) Upon certification by the police officer that there existed probable cause to believe that the person had been acting in violation of § 4177L of this title or a local ordinance substantially conforming thereto and that the person refused to submit to a chemical test after being informed of the penalty of revocation for such refusal, the Secretary shall revoke the person's driver's license and/or driving privilege for a period of 2 months for a person with no previous violation of § 4177L of this title or this section or a similar statute of any state or the District of Columbia or local government; 6 months for a person with a previous violation of such statutes as described above; and 12 months revocation for a person with 2 or more previous violations of such statutes as described above.

(c) Except in those cases wherein the police officer acts pursuant to subsection (b) of this section:

(1) Upon certification by the police officer that there existed probable cause to believe that the person was in violation of § 4177 of this title or a local ordinance substantially conforming thereto and the person was arrested on that occasion for a violation of § 4177 of this title or a local ordinance substantially conforming thereto or for violation of a criminal statute dealing with injury or death caused to another person by the person's driving or operation of the vehicle, if driving under the influence is included as an element of such charge, the Secretary shall revoke the person's driver's license and/or driving privilege for a period of 3 months for a first time DUI offender, 1 year for a second DUI offender, or 18 months for more than 2 DUI offenses. For purposes of this subsection, a DUI offender shall include anyone who has previously committed a first offense as defined in § 4177B(e) or lost their license pursuant to this section and any person convicted of a violation of § 4177 of this title or similar statutes of any state or the District of Columbia or local government within 5 years of the date of the charge in question, a revocation within 5 years of said date for an implied consent violation or a revocation within 5 years of said date under this subsection.

(2) Upon certification by the police officer that there existed probable cause to believe that the person was in violation of § 4177L of this title or a local ordinance substantially conforming thereto, and the person was arrested on that occasion for a violation of § 4177L of this title or a local ordinance substantially conforming thereto, the Secretary shall revoke the person's driver's license and/or driving privileges for a period of 2 months for the first offense under said section or from 6 to 12 months for each subsequent offense pursuant to said section.

(d) No revocation under subsection (b) or (c) of this section is effective until the Secretary or a police officer or other person acting on the Secretary's behalf notifies the person of revocation and allows the person a 15-day period to request of the Secretary in writing a hearing as herein provided. If no request is filed in writing with the Division of Motor Vehicles within the 15-day period, the order of revocation becomes effective. If a request for a hearing is filed, a revocation is not effective until the final decision of the hearing officer resulting in a decision adverse to the person. Notwithstanding the foregoing provisions of this section, if no request is filed within the 15-day period, but the person has entered the FOE-IID Diversion pursuant to § 4177B(g) of this title, no revocation herein imposed shall be inconsistent with any revocation imposed by participation in the FOE-IID Diversion.

(e) On behalf of the Secretary, the police officer offering a chemical test or directing the administration of a chemical test shall serve immediate notice of revocation on a person who refuses to permit chemical testing after being informed of the penalty of revocation for such refusal, or on a person who is arrested on that occasion, either for a violation of § 4177 or § 4177L of this title or a local ordinance substantially conforming thereto or for violation of a criminal statute dealing with injury or death caused to another person by the person's driving or operation of the vehicle, if driving under the influence is included as an element of such charge. The officer shall take the Delaware license or permit of the driver in any such case and issue a temporary license effective only for 15 days with a provision for an additional period if a written request for a hearing is received by the Division of Motor Vehicles within the 15-day period. The police officer shall send the person's driver's license or permit to the Secretary along with the certificate required by subsection (b) or (c) of this section.

(f) The hearing under this section shall be before the Secretary or the Secretary's designee. The scope of the hearing shall cover the issues of:

(1) With respect to subsections (b) and (c) of this section, whether the police officer had probable cause to believe the person was in violation of § 4177 or § 4177L of this title or a local ordinance substantially conforming thereto.

(2) With respect to subsection (c)(1) of this section, whether by a preponderance of the evidence it appears that the person was in violation of § 4177 of this title or a local ordinance substantially conforming thereto. For purposes of this subsection an alcohol concentration of .08 or more pursuant to testing provided for in this section, or § 4177 of this title, or a positive indication of the presence of drugs, shall be conclusive evidence of said violation.

(3) With respect to subsection (c)(2) of this section, whether by a preponderance of the evidence it appears that the person was in violation of § 4177L of this title or a local ordinance substantially conforming thereto. For purposes of this subsection an alcohol concentration of .02 or more pursuant to the testing referred to in this section shall be conclusive evidence of said violation.

(4) With respect to subsection (b) of this section, whether the person refused to permit the test after being informed of the penalty of revocation for such refusal.

(g) The hearing specified in this section shall be scheduled within 60 days following the filing of the request for a hearing.

(h) In addition to the revocation authorized by this section, the Secretary shall require attendance of the person whose license is revoked at a course of instruction or rehabilitation program established under § 4177D of this title.

21 Del. C. 1953, § 2740B; 57 Del. Laws, c. 52; 57 Del. Laws, c. 620, § 12A; 61 Del. Laws, c. 474, § 1; 63 Del. Laws, c. 307, § 1; 63 Del. Laws, c. 430, § 3; 64 Del. Laws, c. 13, § 3; 70 Del. Laws, c. 26, § 11; 70 Del. Laws, c. 36, §§ 3, 5-7, 13-15; 70 Del. Laws, c. 186, § 1; 72 Del. Laws, c. 92, § 13; 74 Del. Laws, c. 333, § 4; 75 Del. Laws, c. 397, § 14.